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Convention on the Elimination of All Forms of Discrimination against Women

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Committee on the Elimination of Discrimination against Women

Concluding observations on the fourth periodic report of Kyrgyzstan

Addendum

Information provided by Kyrgyzstan in follow-up to the concluding observations*

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* The present document is being issued without formal editing.

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Interim information on the implementation of paragraphs 22 (c) and 28 (b) and (d) of the concluding observations on the fourth periodic report of Kyrgyzstan

The Kyrgyz Republic acceded to the Convention on the Elimination of All Forms of Discrimination against Women in accordance with Decision Z No. 320-1, adopted by the Legislative Assembly of the Zhogorku Kenesh (parliament) on 25 January 1996 and Decision P No. 257-1, adopted by the Assembly of the Peoples of Kyrgyzstan on 6 March 1996.

1. In compliance with the provisions of the Convention, Kyrgyzstan submits periodic reports to the Committee on the Elimination of All Forms of Discrimination against Women.

2. In October 2015, the Kyrgyz Republic presented its fourth periodic report on implementation of the Convention to the Committee.

3. The concluding observations of the Committee on the fourth periodic report were discussed extensively at round tables by participants who represented State bodies, non-governmental and international organizations, the expert community and the media.

An interdepartmental working group was established by order of the Government. The working group conducted multilateral and bilateral working meetings, which included consultations with relevant non-governmental organizations, and prepared a draft plan of action for implementation of the concluding observations of the Committee on the fourth periodic report of the Kyrgyz Republic on the implementation of the Convention (hereinafter the plan). The draft plan was presented and fully discussed at a round table with many participants from Government bodies and civil society, and all their comments and proposals were taken into account.

The final draft of the plan was submitted — in accordance with established procedure — for harmonization to the relevant ministries and departments, which also offered their opinions of the draft and made a number of recommendations.

The final draft was then approved by Government Order No. 123-r of 19 April 2017 approving the Plan of action for implementation of the concluding observations of the Committee on the Elimination of Discrimination against Women on the fourth periodic report of the Kyrgyz Republic on implementation of the Convention on the Elimination of All Forms of Discrimination against Women (hereinafter the concluding observations).

4. The concluding observations highlighted a number of key issues on which the Kyrgyz Republic should report to the Committee in 2017. This report was prepared in response, and it contains a summary of the information provided by implementing ministries, departments and other State bodies.

5. The report contains specific information on compliance with paragraphs 22 (c) and 28 (b) and (d) of the concluding observations and on measures taken in the Kyrgyz Republic, as well as information on progress made for the advancement of women, the obstacles that remain and plans for further action.

6. As preliminary and general remarks, the present report notes that the Government of the Kyrgyz Republic is aware of the need for a comprehensive approach to make substantial progress towards gender equality, and it recognizes the protracted nature of the process of achieving equal rights and opportunities for all members of society. While remaining committed to further progress, the Kyrgyz Republic is at present incorporating the global sustainable development goals into its

strategic and other policy instruments, including in the area of promoting gender equality.

It should be noted that the Constitution of the Kyrgyz Republic enshrines the basic principles and standards that are fundamental to a coherent State policy on gender equality.

7. Article 1. According to the Constitution:

7.1. The equality of human and civil rights and freedoms is guaranteed, regardless of sex, race, language, ethnicity, religion, age, political or other beliefs, education, origin, wealth or other status, or other circumstances.

7.2. All individuals have the right to work, to exercise their abilities and to choose a profession or occupation, to have labour protection and working conditions that are consistent with safety and hygiene requirements and the right to remuneration not less than the legally established minimum wage.

8. Article 2. The Constitution establishes the principle of equality of men and women.

9. According to article 16, paragraph 4, of the Constitution, men and women have equal rights and freedoms and equal opportunities to exercise them. The Act on State Guarantees of Equal Rights and Opportunities for Men and Women gives effect to this constitutional norm. It prohibits gender discrimination against men or women in any sphere of activity:

- Discrimination based on family status, pregnancy, potential pregnancy or family responsibilities
- Sexual harassment
- Different remuneration for equal work requiring equal qualifications.

Article 21 of the aforementioned Act addresses prevention and suppression of gender-based harassment in the workplace and accountability for gender discrimination:

An employer may not apply pressure to or intimidate male or female workers for rejecting the employer's sexual advances or for filing a complaint of gender discrimination against the employer.

In cases of coercion or intimidation of employees on the basis of gender stereotypes, including sexual harassment, the employer shall be held accountable in accordance with Kyrgyz legislation.

The employer shall take measures to prevent any occurrences of sexual harassment.

The employer is liable to prosecution under Kyrgyz legislation if the employer, through unlawful actions, forces a worker to resign.

If it is established that gender discrimination has occurred, the employee shall be compensated for moral and material harm in judicial proceedings. The court may require the employer to employ a person who had been denied employment owing to gender discrimination or to reinstate a person who was dismissed owing to gender discrimination.

There is an established procedure for the reporting by citizens of violations of gender equality. Persons subjected to gender discrimination have the right to file parallel applications with the Akyikatchy (Ombudsman), the public prosecutor, the courts, other central government bodies and local government bodies.

10. The above constitutional provisions provide information on the measures undertaken as part of the State policy to promote gender equality. Specific information on issues identified by the Committee in its concluding observations requiring an interim report is provided below.

For example, in paragraph 22 (c) of the concluding observations issued following consideration of the fourth periodic report of the Kyrgyz Republic in October 2015:

The Committee recommends that the State party:

- Establish an oversight mechanism allowing the monitoring of violence against women involved in prostitution by the police and stop illegal forced testing, often performed during police raids, for HIV/AIDS and other sexually transmitted diseases of women involved in prostitution;

In order to implement the recommendations, the following activities were planned under paragraph 5 of the Plan of action.

- Establish an interdepartmental working group to draft guidelines on action to strengthen the oversight mechanism that allows monitoring of violence by the police against women facing intersecting forms of discrimination, including compulsory HIV testing; this document is due to be completed in the second half of 2017; the expected result/indicator is the establishment of the interdepartmental group and the drafting of the document.

- Conduct training for internal affairs personnel on the elimination of all forms of violence against women; the deadline is the second half of 2017; the entities in charge are the Ministry of Internal Affairs and the Ministry of Labour and Social Development, in consultation with the Office of the Ombudsman, the Office of the Procurator General, the Ministry of Defence and non-profit organizations.

In the context of implementation of paragraph 5.1, an interdepartmental working group was established, comprising representatives of the Office of the Procurator-General, the Ministry of Internal Affairs, the Ministry of Labour and Social Development, and the Office of the Ombudsman, and is currently preparing the draft guidelines. As part of the preparatory process, the Office of the Procurator-General investigated whether there had been any documented statements or complaints regarding violence by police officers against women involved in prostitution, including forced testing for HIV and other sexually transmitted diseases. It was determined that no such statements had been made. Nevertheless, the interdepartmental working group took into account anecdotal evidence provided by organizations that defend the interests of women facing intersecting forms of discrimination. According to those organizations, these women do not make such statements on account of their fear and distrust of the law enforcement authorities. Accordingly, the draft guidelines set out requirements for each State body represented in the interdepartmental working group so that they can strengthen oversight and detect violations of the rule of law and the rights of this group of women. The guidance for the Ministry of Internal Affairs suggested increased monitoring by managers, the internal investigations service and the public supervisory board of the Ministry.

In the guidelines, special attention is given to verifying the legitimacy of grounds for police raids, reviews of unauthorized raids and the detection of violations of the rule of law and human rights so that discretionary measures can be taken.

The draft guidelines, after the harmonization procedure, will be submitted in due course for approval according to the established procedure.

The Office of the Procurator-General has prepared procedural guidelines for its staff to ensure strict and uniform implementation of the Act on HIV/AIDS in the Kyrgyz Republic. The guidelines also cover issues such as forced HIV testing, stigmatization and discrimination against persons living with HIV/AIDS.

Regarding paragraph 5.2, the following activities have been implemented to date:

- In early 2017, following a joint meeting that took place at the Ministry of Internal Affairs with representatives of the United Nations Development Programme, an agreement was reached on a joint project for cascade training sessions for police officers (at least 500 individuals) in all provinces on the prevention of and response to gender-based violence against women;
- To date, a training module and a package of procedural and other resource materials for the cascade training have been prepared, and lists of participants and a schedule of training courses that start in January 2018 have been drafted and approved.

11. In paragraph 28 of the concluding observations, the Committee recommends that the State party:

(b) Adopt comprehensive legislation to combat discrimination and sexual harassment in the workplace;

In Kyrgyzstan, the right of women to be free from sexual harassment in the workplace is protected by law. The relevant rule on gender discrimination is reflected, in particular, in the Act on State Guarantees of Equal Rights and Opportunities for Men and Women. However, law enforcement agencies have no meaningful data regarding officially documented statements or complaints of sexual harassment.

The concluding observations of the Committee in this area have been reflected in a number of paragraphs of the national plan of action for achieving gender equality for the period 2015-2017. These paragraphs refer to measures taken to combat direct and indirect forms of discrimination and violence against women. In particular, they take into account International Labour Organization (ILO) Employment Relationship Recommendation, 2006 (No. 198), which strongly recommends that a complaint mechanism and access to that mechanism be made available to those who wish to file complaints regarding workplace tension over with gender issues.

There is also a need for specific research in this area, as the problem often lies hidden, and accordingly, as mentioned above, law enforcement agencies have received almost no complaints of sexual harassment. However, the trade union organization Tayanych has conducted the only sociological study in the Kyrgyz Republic to date, consisting of an anonymous survey of 1200 respondents. Its findings include the following:

- The respondents noted that cases of sexual harassment (that they had experienced or were aware of) had taken place predominantly in such places as institutions of higher education and private enterprises; it was highlighted that, owing to social stereotyping, the affected women usually remained silent, and were unlikely to take action to protect their rights;
- Similar cases were reported by women journalists, who noted that, when interviewing men, they faced sexual harassment in the form of suggestions to meet informally;
- Several participants employed by private enterprises reported that some male proprietors of sewing shops tried to persuade women employees to enter relationships by telling the women that if they agreed they would receive a

salary raise, and if they refused they would be dismissed. At the same time, it is difficult to prove that such incidents have taken place.

The Office of the Ombudsman, in view of the survey responses received, is planning to conduct a comprehensive survey of existing labour relations practice on the subject of sexual harassment in the workplace as part of the preparations for the next special report to be considered by the Zhogorku Kenesh.

In addition, the new national plan for achieving gender equality, which is currently being drafted by the specially established interdepartmental working group, will include targeted measures for legal, organizational and awareness-raising efforts and other measures to prevent and respond to cases of sexual harassment, including in the workplace.

(d) Consider introducing legislation on basic rights and the right to maternity leave in the informal sector and ratifying the Domestic Workers Convention, 2011 (No. 189) of the International Labour Organization.

In response to the above observation, the Plan provides for the following actions:

Monitoring of compliance with the labour rights of women, strengthening of their fundamental rights and the right to maternity leave in the informal sector; studies of existing practice relating to women's domestic labour.

The Office of the Ombudsman and the Ministry of Labour and Social Development are responsible for these efforts. The time line is from the second half of 2017 to the first half of 2018. The expected outcome/indicator of compliance is the submission of a monitoring report to the Zhogorku Kenesh. The procedure established is that the Ombudsman will prepare a special report for consideration by the Zhogorku Kenesh.

To date, the monitoring has been carried out, a statement on the outcome and recommendations has been included as a main section of the special report of the Ombudsman on compliance with the labour rights of women and children in the Kyrgyz Republic, which has been submitted for consideration to the Zhogorku Kenesh.

The main text and the findings of this report contain the following statements.

The Kyrgyz Republic has ratified the three main ILO conventions relating to gender equality:

- Convention concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, 1951 (No. 100);
- Maternity Protection Convention (Revised), 1952 (No. 103);
- Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

Basic national policy documents contain provisions for maternity and persons with family responsibilities.

– One of the priorities of the national strategy for achieving gender equality by 2020, adopted in 2012, is the creation of a system of functional adult education to complement the formal education system. This functional education system is expected to bring about a change in the structure of employment over the next decade, and it will, in particular, expand women's opportunities for balancing work and family responsibilities. The strategy is designed to increase women's employment by giving them more opportunities, bringing them out of informal shadow-sector employment into the formal labour market, and establishing

gender-sensitive working conditions that are conducive to balancing work and family responsibilities.

- The main objective of the comprehensive programme on family and motherhood support for the period 2012-2015, adopted in 2012, is to improve the support system for families with many children (support for children's education, a reduction of preschool fees, employment with flexible working arrangements for parents with many children, and so on).
- Under the programme of State guarantees relating to citizens' health care, citizens are entitled to receive free and subsidized health care from health-care facilities, irrespective of their form of ownership. Free medical care at both outpatient and inpatient facilities is an entitlement for women during pregnancy and during and after childbirth and for children of up to 16 years of age (in some cases up to 18).
- The programme for social protection development for the period 2015-2017 provides for additional social protection measures to improve the legislation governing maternity benefits.
- The health-care sector investment plan for the period 2016-2025 (Kyrgyz Republic, 2016) sets out priorities for the required investments in the health-care sector, including the introduction of a district-level model for outpatient services for pregnant women at high risk; a mobile consultancy system to provide medical care for women and newborns; and enhancement of the quality of health services by establishing mandatory social and economic conditions for young professionals, particularly in the regions.

The labour legislation of the Kyrgyz Republic covers all workers who have an employment contract with an employer. The Labour Code includes special labour regulation provisions for specific groups of workers (seasonal workers, shift workers, home-based workers, teaching staff and individuals working for employers who are natural persons (employees), and so on). In addition to the Labour Code, there are a number of specific national laws, including the Act on State Guarantees of Equal Rights and Opportunities for Men and Women, which establishes State guarantees for gender equality in labour relations.

All women employees in Kyrgyzstan are entitled to take leave from work and temporarily suspend their employment over the period before and after the birth of a child, including:

- Women working in the formal labour market (who are in an employment relationship with the employer, including home-based workers and seasonal workers)
- Individual entrepreneurs
- Members of rural (farming) households
- Women who are officially registered as unemployed persons with the State Employment Service.

The duration of leave and the right to postnatal maternity leave.

Maternity leave is granted to women at their request and subject to a medical report, as stipulated by the Labour Code. The period of leave is 126 calendar days (18 weeks), including 8 weeks of postnatal leave. In the case of perinatal complications or the birth of 2 or more children, the leave period is increased to 20 weeks. Accordingly, the Act is consistent with ILO Convention No. 103, which provides that the mandatory postnatal leave period should in no case be less than 6 weeks. According to the labour regulations, maternity leave is calculated as a single period

and is granted to women in full, regardless of the number of days the woman has taken prior to the birth.

The State pays special attention to issues such as the following:

- The provision of benefits for residents of high mountain areas, including in connection with maternity. For instance, the period of maternity leave is increased by two weeks, with payment of the maternity benefit at the full amount of the salary, regardless of the length of service. In the case of the birth of 2 or more children, the period is 180 days, regardless of the actual duration of prenatal leave.
- A woman's right to adoption leave. State policy does not discriminate against women who are not biological parents and the social protection system grants them the right to maternity leave. A woman who has adopted a child (or children) under the age of three months can choose which type of leave to take. A mother who has adopted a child is entitled, if she so wishes, to take maternity leave (instead of adoption leave) from the day of adoption of the child for 70 calendar days, and if simultaneously adopting 2 or more children, 110 calendar days from the day of their birth. This option is intended to maintain the confidentiality of adoption.
- The provisions of the Labour Code also apply to women sentenced to imprisonment: all incarcerated women who are working are covered by mandatory State social insurance and are entitled to maternity leave under the same rules.
- There are also provisions for leave entitlement in the case of illness or perinatal complications.

The following categories of women also have benefit entitlements:

- Women who are in an employment relationship with an employer. The right to benefits becomes effective when the employment relationship begins and is terminated on the date of expiration of the contract.
- Women who are entrepreneurs. The right to benefits becomes effective in the month when tax is paid, a patent is acquired or a tax contract is concluded and ends when the contract expires.
- Members of rural (farming) households; The right to benefits becomes effective when the right to private ownership of the land is established.
- Unemployed women who are officially registered as unemployed persons with the State Employment Service.

The State and the employer are responsible for financing maternity leave. The employer pays 100 per cent of the salary (earnings) for the first 10 working days. From the eleventh working day, the benefit shall be paid from the national social insurance budget in the amount of 10 notional units each month. The payment mechanism provides for full payment of the benefit to the woman by the employer without delay for the first 10 working days. The total benefit paid from the eleventh working day shall also be paid by the employer.

Nevertheless, the legislation on benefit estimation needs to be improved, and the relevant regulatory act providing for amendments and additions is at the harmonization stage. In particular, the rule for determination and payment of maternity benefits is under review, and the new provisions should come into effect in the near future.

Employers may use their own funds to pay maternity benefits that are higher than the legal requirement. The State welcomes improved benefits and promotes initiatives by trade unions and employers' organizations. The legislation provides that benefits may be increased at an employer's expense if so stipulated in a collective agreement. Under the Labour Code, at the request of a pregnant woman and subject to a medical report, an employer must take action to protect the pregnant woman from the impact of adverse working conditions.

The special report summarizes a general survey of the existing legislation, and the following omissions and violations of the rights of working women are noted in its findings:

- The absence of written labour contracts
- The absence of employment records
- Compulsory unpaid overtime (non-standard working hours)
- Compulsory work at weekends or on public holidays
- Non-compliance on the part of employers with requirements such as occupational and industrial safety working conditions.

On the basis of monitoring data, the special report sets out a number of recommendations, including:

- Improvement of legislation to increase monitoring of violations by entrepreneurs of the labour rights of women working in the informal sector
- Preparation for ratifying ILO Domestic Workers Convention, 2011 (No. 189)
- Strengthen awareness-raising campaigns to raise public awareness of the right to work.